

# Sovereign Nations

May/June 1998

NEWSLETTER OF TRIBAL SELF-GOVERNANCE

## *Self-Governance Provides Hope for Shoalwater Tribe*



*Shoalwater Chairman Herbert Whitish*

Once on the brink of extinction, with little or no federal funding and infant mortality rates over 60%, the Shoalwater Tribe of Willapa Bay, Washington, has begun a comeback to what ethnologist James Swan described in the 1850's, as the "Indian's Paradise."

The people of Shoalwater Bay were originally comprised of members from surrounding Tribes, mostly, Chinook, Chehalis and Quinault. They were a peaceful people who allowed

their Bay to serve as a way station for Indians traveling through the area. The Shoalwater Bay (now called Willapa Bay) was a natural resources paradise and had bountiful supplies of salmon, oysters, wild fowl, clams, berries and game.

The 335-acre (one square mile) Tribal reservation was created in 1866 after those living on the Bay refused efforts to relocate them to the Chehalis or Quinault Reservations. The Tribe was

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# In the Beginning.....



Joe DeLaCruz

"In the beginning there was Joe DeLaCruz", is a quote that is often bandied about during Tribal meetings and conferences. But, it is out of respect for the former Quinault Nation President, who is acknowledged by all as the Self-Determination and Self-Governance Tribal sage and historian. The reality is, Joe was there in the beginning, especially around Self-Governance, and as he says, "we need to remember how all of this began."

## According to Joe.....

Self-Governance has its roots in the Indian Self-Determination and Education Assistance Act of 1975, which enabled Tribes for the first time to enter into contracts with the federal government to deliver federal programs. However, the natural evolution from Self-Determination to Self-Governance never occurred because of the stranglehold and monopoly that the federal agencies had over Tribes in their administration of contracts. Not to mention, the excessive overhead of the BIA and IHS, which by some estimates, ate up almost 80% of every budgeted dollar.

Consequently, a series of events would take place, which would lead to the enactment of "a demonstration project" for Self-Governance. Back in 1986, Joe DeLaCruz, then President of the Quinault Nation, along with leaders of nine other Tribes formed the Alliance of American Indian

*"No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself. We call the exercise of this right Self-Determination. The practice of this right is Self-Governance."*

Leaders. The Tribes and their Chairmen included: Wendell Chino, Mescalero Apache Tribe; Roger Jordain, Red Lake Band of Chippewa; Art Gambel, Mille Lacs Band of Ojibwe; Larry Kinley, Lummi Nation; Willy Colgrover, Hoopa Valley Tribe; Ed Landerman, Rosebud Sioux; Richard Realbird; Crow Tribe; Ed Thomas, Tlingit and Haida Central Council; and Mickey Pablo, Confederate Salish & Kootenai.

The Alliance of American Indian Leaders developed a proposal in 1987 to Congress that it adopt Concurrent Resolutions that recognize the role of Indian Nations in the formulation of the U.S. constitution; and that recognize the principle of government-to-government relations. The proposals were sent to the House Interior and Related Agencies Sub-Committee on Appropriations, but no actions were taken by Congress. Later in 1989, the leaders held a forum at the University of California at Berkeley on Tribes and the constitution.

In the Fall of 1987, the Arizona Republic published a series of stories that would serve as the catalyst which would forever change the relationship between Tribes and the federal government. The stories, entitled "Fraud in Indian Country", dealt with the corruption and misuse of funds within the BIA.





Congressman Sidney Yates, of Illinois, called an oversight hearing in the Appropriations Committee of which he was the chair. As it turns out, the Alliance of American Indian Leaders was meeting in Washington, D.C. the same week as Chairman Yates was holding the oversight hearing.

Joe DeLaCruz recalls how some of the Alliance Tribal leaders walked into the committee room to hear then Assistant Secretary for Indian Affairs, Ross Swimmer unilaterally proposing to Congressman Yates that the BIA transfer all resources, at all levels, to any Tribe seeking such a transfer. In addition, Mr. Swimmer's proposal, known as Section 209, contained a provision absolving the United States of its trust responsibilities to those Tribes accepting the transfer. Joe said he most remembers Mr. Swimmer saying that, "things were so bad (because of the newspaper article) that they should just turn everything over to the Tribes and let them sink or swim."

Congressman Yates, being a long-time friend to American

Indian issues, saw the Tribal leaders and yelled out, "what do you think of that Mr. DeLaCruz?" Joe said, "It sounds like termination to me."

Later, Congressman Yates met with Joe DeLaCruz and Chairman Larry Kinley of the Lummi Nation who countered Swimmer's proposal by suggesting a "demonstration project" be established which maintained Self-Governance without abolishing the trust responsibilities. Congressman Yates liked the idea and in 1988, Congress enacted amendments to the Indian Self-Determination and Education Assistance Act that authorized the Indian Self-Governance Demonstration Project for five years. The Project called for up to two years of planning after which the Tribes would negotiate a Compact and Annual Funding Agreement.

Because of their proximity to the issues and their involvement in the development of the proposal, nine of the Tribes from the Alliance of American Indian Leaders,

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## National Group to Address Contract Support Issues

Both challenging and complex, issues surrounding contract support costs (CSC) continue to surface. By conservative estimates, the IHS and BIA are more than 3-5 years behind in providing full funding of contract support costs to Tribes that elect to contract or compact programs previously administered by the federal government. For all intents and purposes, the lack of adequate contract support funds has limited a Tribe's ability to exercise their rights under Self-Determination and Self-Governance.

The National Congress of American Indians (NCAI) is coordinating the activities of the National Policy Workgroup on Contract Support Cost which held its first meeting on June 16, 1998 in Green Bay, Wisconsin. The Workgroup was formed as is a result of Tribal requests to Assistant Secretary of Indian Affairs, Kevin Gover and Dr. Michael Trujillo, IHS Director during the Spring Self-Governance Conference held this past April, 1998.

The Workgroup is comprised of Tribal policy officials and technical support staff. A smaller Technical Working Team has been formed comprised of Tribal, BIA and IHS

representatives. This Workgroup will be responsible for developing a report outlining both short and long-term recommendations for review and consideration by the larger Policy Workgroup.

A meeting for the full National Policy Workgroup is tentatively scheduled for July 22 & 23, 1998 (Washington, D.C.), pending completion of the report by the Technical Working Team. Following that meeting, it is the intention of the Workgroup to include representatives from the Office of Management and Budget, Office of Inspector General and Congressional staff to review and discuss final recommendations. For questions regarding any of the meetings, please contact Jack Jackson, Jr., at the NCAI at (202) 466-7767.

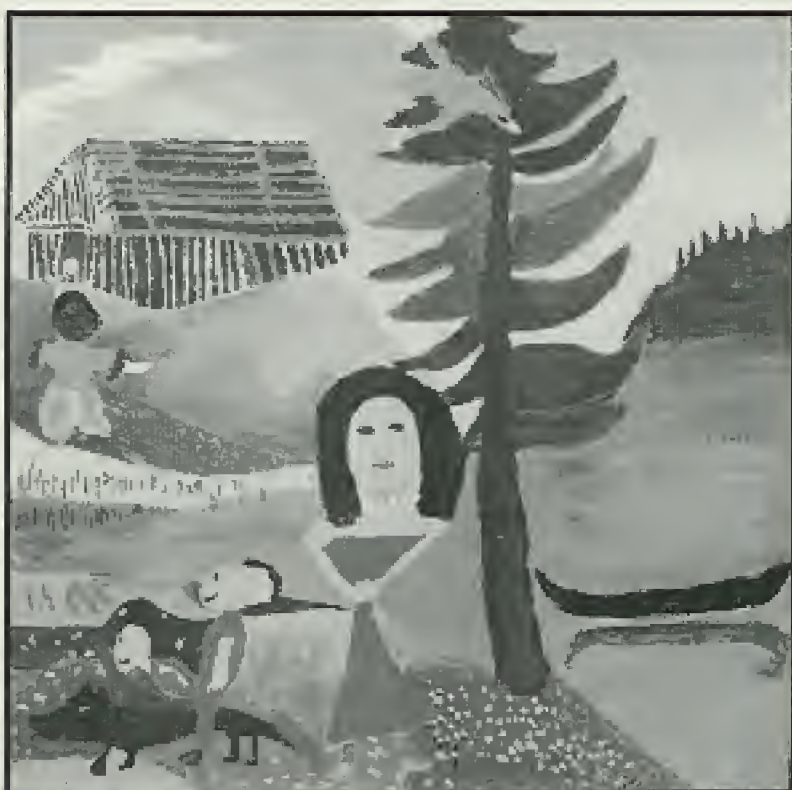
The NCAI National Policy Workgroup on CSC should not be confused with the sub-group within the BIA Tribal Priority Allocation (TPA) workgroup that is compiling and analyzing historical and financial data which will be forwarded to the NCAI National Policy Workgroup for use in their decision-making.





## Tribal Profile:

# Shoalwater Tribe of Willapa Bay Washington



*The Shoalwater Tribe is rich in myths and stories such as "The Legend of the Conflict of the Wolf People", as depicted by storytelling murals painted by Shoalwater children.*

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officially recognized as the Shoalwater Tribe in 1971.

In recent years things have not been as good or bountiful for the Tribe. Beginning in the eighties, Tribal babies began dying at unbelievable rates and under conditions, to this day, undetermined. The Tribe has had to fight to establish a budget for health care and BIA programs. And if that isn't enough, tidal erosion, which has washed away over 3,000 acres in the area, is now nipping at the reservation boundary.

About that time, the Tribe elected a man who decided to take the Tribe's "destiny into our own hands." Chairman Herbert Whitish has led the Tribe, often in a loud and spirited fashion, out of despair and into the future. Chairman Whitish began with a three-year battle to secure funding to

research the infant mortality rates and to begin the operation of health care programs in their own health facility. A new Shoalwater Health Clinic, built in 1994, meant that patients would no longer have to drive 90 miles for health services. "We didn't know if we could do this," says Chairman Whitish. "Everybody has doubted us."

The Tribe is in their second year of a BIA Self-Governance Compact and recently completed negotiations for their first year with IHS Self-Governance. Chairman Whitish likes to joke that only five years ago they were performing their accounting functions on the PC financial package Quicken. He believes strongly that Tribes entering Self-Governance must first develop their governmental infrastructure. He has placed emphasis on new Tribal budgetary processes, solid accounting procedures and comprehensive legal codes. "Tribes in Self-Governance need to think about their accountability," says Chairman Whitish, "and develop



*Maskmaking was a method used by tribal women to acknowledge and express grief related to the infant mortality crisis. When completed, each woman wrote about her mask and told her story of loss and healing.*





Good systems internally, and be solid at what they do before redesigning programs. We are building capability and capacity."



Opened in 1994, the Shoalwater Clinic houses the Tribe's health programs.

Some of the early changes brought about by Self-Governance include the reclamation of Social Service programs like General Assistance and Indian Child Welfare, adding more funds to education, developing a paramedic EMT training program and beginning plans for a Tribally operated fire department. Chairman Whitish says it is easier to develop programs because Self-Governance has eliminated the many levels of bureaucracy. "It used to take forever to get answers to the simplest of questions," he says.

Chairman Whitish says the Tribe and its members have begun to think outside their "little square mile." "We were always taught to color within the lines. The P.L. 93-638 contracting process held us in a box so long, it has been hard to understand that you can now step outside the box," says Chairman Whitish. In fact, the Tribe has acknowledged that as a government they must have a role in the preservation of Willapa Bay and have become involved with the U.S. Fish and Wildlife Department over the eradication of the non-indigenous *Spartina* grass that is effecting clam and oyster beds. In addition, "thinking outside of the box", has begun to erode some of the separation between the Tribe and local non-Indian residents who have started using the Tribal clinic and who will benefit from the operation of paramedic and firefighting programs.

The Shoalwater Tribe has faced adversity head on, babies dying from unknown causes, a raging ocean, and incompetent federal bureaucrats. And through it all, they have emerged a stronger people. As Chairman Whitish says, "Our babies haven't died in vain. Before we didn't have much hope. Everyone turned their backs on us. A few years ago our children would look down, with low self-esteem, when they walked the reservation. I wanted our people to look to the horizon and a better future. You can't do that if you're looking at your feet. Our problems and the process and battles to overcome them has awakened us to an understanding of what being a Tribe is all about."

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*"We now know we can help ourselves  
and control our destiny"*

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Throughout their trials and tribulations the Tribe has learned many valuable lessons and that adversity does indeed bring strength. "We now know we can help ourselves and control our destiny," says Chairman Whitish. "Our problems and moving into Self-Governance has made our people think for themselves and their own future. The apathy has gone away and been replaced by more dialogue about what the future of this Tribe is going to be."

The Shoalwater Bay is indeed a beautiful place and the Shoalwater people, strong and proud. If Chairman Whitish and the Shoalwater people have their say, they will, with a great deal of effort and pride, and the help of programs like Self-Governance, again find paradise.







## BIA/TRIBAL WORKGROUP ON TRIBAL NEEDS ASSESSMENTS

*Assistant Secretary of Indian Affairs, Kevin Gover, formed the BIA/Tribal Workgroup on Tribal Needs Assessments with the charge to provide analysis and recommendations on Tribal Needs, Tribal Priority Allocations and Contract Support Costs funding issues. For a complete list of Workgroup coordinators and members, contact Jeanette Hannah, BIA Central Office, at 202-208-6181.*

### **Workgroup #1 - Tribal Priority Allocation/Bureau of Indian Affairs Budget**

#### **Sub-group A: Short-term Tasks**

- History & Distribution Basis
- Historical BIA deficiencies
- Budget and funding bases for each Tribe
- Basis for various program funding; i.e. fisheries, etc.
- Criteria for a program to be in TPA

#### **Sub-group B: Long-term tasks**

- Re-evaluate the TPA system
- Develop alternative methods & analyze the impact on Tribes
- Develop basis and justification for additional resources to Tribes

### **Workgroup #2- Identification of National Standards & Comparisons:**

- Identify unmet needs criteria and standards
- Need clear definition of "unmet need"
- Data and conditions compared to mainstream America

### **Workgroup #3 - Overview justification of federal obligation to Tribes**

- Counter the "penalize the rich tribes" concept
- Need to address "What is the nature of the federal obligation?"
- Consistent treatment with states

### **Workgroup #4 - National Budget Overview**

- Impact on Tribes due to "unfunded mandates"
- Compare and update data on all Federal Indian programs

### **Workgroup #5 - Contract Support Costs**

- Contract Support Cost as it relates to BIA/TPA budget including statutory requirement and history
- Impacts of Ramah case (to be coordinated with NCAI task force)

## IHS TRIBAL COMMITTEE TACKLES ISSUES AT QUARTERLY MEETING

The IHS Tribal Self-Governance Advisory Committee (TSGAC) met on June 14<sup>th</sup>, 1998 in Green Bay, WI and discussed the following items:

- 1. Review of a Proposed Draft Appeals Process**
- 2. Update on the Status of the Diabetes Workgroup**
- 3. Government Performance & Result Act**

Joe DeLaCruz presented his work on the IHS GPRA performance review. He reiterated that Tribes need to be involved in GPRA because of its importance in budget formulation. The IHS-TSGAC agreed to follow-up with the Baseline Measure Workgroup to ensure that duplicate reporting is avoided. The Committee agreed that the BIA final reporting requirements is a good model.

### **4. Fall Self-Governance Conference**

The Committee recommended another joint IHS/BIA conference as all considered the Spring conference very successful.

The Advisory Committee will hold a retreat in Hinckley, MN., July 27-28<sup>th</sup>, with the next quarterly meeting scheduled in September based on Dr. Trujillo's availability.





## Updates

### **HOUSE MARK-UP INCREASES IHS FUNDING; REPORT LANGUAGE PLACES MORATORIUM ON SELF-GOVERNANCE**

The House Interior Appropriations Committee marked-up its FY 1999 Interior Appropriations Bill on June 18<sup>th</sup> with a proposed 7% increase for the Indian Health Service budget. The \$147 million increase should cover most mandatory cost increases: staffing and operating cost for new facilities, inflation and pay costs, and facilities construction. The House mark-up is good news as the President's proposed budget only included a \$19.7 million (or .9%) increase for IHS.

The bad news is the proposed language around the contract support costs. The Committee mark-up calls for a \$26 million dollar increase which is \$26 million more than the President proposed. However, more concerning, is the report language which proposes a one-year moratorium that would prohibit the IHS from entering into any new or expanded Tribal Self-Determination contracts and Self-Governance compacts. The Committee also proposes proportional distribution of contract support cost funding across all Self-Determination and Self-Governance contracts and compacts. This would result in reduced payments for most Self-Governance Tribes. Tribes are hoping to kill these proposals once they hit the House floor.

### **PRESIDENT CLINTON NAMES DR. TRUJILLO AS DIRECTOR OF IHS**

President Clinton announced his intention to nominate Dr. Michael H. Trujillo as Director of the Indian Health Service at Health and Human Services. Dr. Trujillo, a member of the Laguna Pueblo in New Mexico, has been the Director of IHS since 1994. His position was up for re-nomination and must now go to the Senate for reconfirmation. As Director of the IHS, Dr. Trujillo also serves as an Assistant Surgeon General and holds the rank of Rear Admiral in the Commissioned Corps of the Public Health Service.

### **PRESIDENT ISSUES EXECUTIVE ORDER REGARDING TRIBAL CONSULTATIONS**

President Clinton issued Executive Order 13084 – "Consultation and Coordination with Indian Tribal Governments" – on May 14<sup>th</sup>, 1998 and published in the May 19<sup>th</sup> Federal Register. The Executive Order provides more detail to federal agencies on consultation with Tribes over the development of federal policies and regulations. Specifically, the Executive Order says that federal agencies must provide for "meaningful and timely" consultation when developing regulations and must consider the compliance costs imposed on Tribal governments.

In addition, the Executive Order directs federal agencies to give expeditious consideration to Tribal requests for waivers of statutory and regulatory requirements. It also encourages federal-tribal negotiated rulemaking and other forms of consensual rulemaking.

### **DID YOU KNOW?**

At present, the IHS per capita expenditure in FY 1997 is \$1,132 as compared to the U.S. citizen per capita expenditure of \$3,261. This would suggest that Indian citizens are provided less than 34% of what is available to a non-Indian citizen. The per capita expenditure of a Medicaid recipient in FY 1997 is \$3,369. The per capita expenditure for a prison inmate in the Federal Bureau of Prisons who receives health care is \$3,489. And the per capita expenditure for a Veteran in a Veterans Administration health program is \$5,458. American Indian people on average secure less than one third of what is available to Medicaid beneficiaries and federal prison inmates.



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*Self-Governance is a Tribally driven initiative intended to provide Tribal governments more control over their own destinies. The project fosters the shaping of a "new partnership" between Tribal governments and the government of the United States. We believe that excellence in related communications and education is fundamental to the achievement of these goals.*

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were the first to initiate the Self-Governance planning process. The Jamestown S'Klallam Tribe joined the group making it ten Tribes that would begin Self-Governance planning.

According to Joe, the planning process wasn't easy. "No one had a handle on appropriations and the BIA budget. We wanted to understand where every penny went," he says. Not to mention, there were many knockdown and drag out fights with BIA bureaucrats who were protecting the status quo.

In 1989, with the help of Senator Dan Evans of Washington and Senator Inouye of Hawaii, Congress passed the Title III amendments to the Indian Self-Determination and Education Assistance Act which clearly spelled out how the Self-Governance project would work. And, of course, in 1994, Title IV legislation was enacted which would make Self-Governance permanent. Today over 209 Tribes participate in Self-Governance with the BIA.

When one looks back at the history, as told by Joe DeLaCruz, it is hard to believe so much has happened in such a short period of time. But leaders like Joe DeLaCruz knew the time would come. "We've never turned over our right to self govern," he says. "Even with generations of paternalistic control, we've never lost that power."

